

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Third Periodic Review of the)	MB Docket No. 07-91
Commission's Rules and Policies)	
Affecting the Conversion)	
To Digital Television)	

To: Secretary, FCC

COMMENTS

Public Broadcasting of Northwest Pennsylvania, Inc. ("PBNP"), by its attorneys, provides these comments in response to the *Notice of Proposed Rulemaking* in the referenced docket, FCC 07-70 (released May 18, 2007) ("*NPRM*").

PBNP applauds the FCC's determination to have a strong DTV system in place across the country on the February 17, 2009 digital transition deadline, and it fully supports that goal. However, PBNP strongly urges the FCC to exercise its discretion under the law establishing the transition deadline to provide substantially more flexibility to stations regarding the process and timing of their achieving their "ultimate" or "final" DTV transmission facilities, particularly in circumstances where there might be some uncertainty regarding the "ultimate" facilities that will be allotted in the DTV Table of Allotments.

Specifically, with respect to WQLN-DT, the allotment in the "Final" DTV Table of Allotments for WQLN-DT is apparently still subject to Canadian clearance. According to ¶ 104 of the just-released *Seventh Report and Order and Eighth*

Further Notice of Proposed Rule Making in MB Docket No. 87-268 (“*Seventh Report and Order*”), the FCC is “working to coordinate all Appendix B facilities as a group so that individual applications do not need to be coordinated.” Clearly, however, until the FCC can finally announce Canadian clearance on the WQLN-DT allotment and PBNP can file its application and be authorized with fully-approved facilities specified for WQLN-DT, PBNP cannot finalize its plans and take concrete steps to construct and operate its “final” DTV facilities. The uncertainty surrounding the WQLN-DT allotment and Canadian clearance affects the timing and process for PBNP’s buildout, as well as the facilities that can be built.

In addition, a change in the antenna specified in the proposed DTV Table for WQLN-DT would materially assist it in the transition process, by allowing it to use the existing antenna instead of having to order and replace that antenna with another one.

BACKGROUND

PBNP is a nonprofit, community-based organization in Erie, Pennsylvania. It is the licensee of noncommercial educational station WQLN (TV), Channel *54, and WQLN-DT, Channel *50, in Erie. Station WQLN is the PBS member station in Erie, broadcasting a wide variety of high-quality news, public affairs, informational, educational and entertainment programming, including children’s programming, to the station’s service area.

WQLN-DT is currently licensed and operating on Channel *50 with a top-mounted antenna shared with WQLN(TV). WQLN-DT operates with ERP of 39.1

kW at 270.7 m HAAT. However, for over 7 years, PBNP has been trying to obtain authorization for operation of WQLN-DT at ERP of 200 kW in order to maximize its DTV coverage in accordance with its pre-election certification in 2004. Among other things, PBNP has proposed operating with a different directional antenna if necessary to obtain Canadian approval. PBNP's currently pending application for 200 kW ERP, File No. BMPEDT-20000412AAR has still not been granted as a result of what PBNP has been told are continuing objections by Canada.

Interestingly, the FCC's proposed Table of DTV Allotments, Appendix B of the *Seventh Further Notice of Proposed Rulemaking* in MB Docket 87-268, FCC 06-150 (released October 20, 2006) specified facilities for WQLN-DT on Channel *50 of 200 kW at 271 m HAAT – precisely those facilities that PBNP has applied for and, as of yet, been unable to obtain. Those same facilities are specified in the “Final” DTV Table in Appendix B of the *Seventh Report and Order*.

In response to inquiries to the International Branch about the proposed allotment at 200 kW, PBNP has been informed that there has been to date no Canadian objection to that particular allotment in the proposed DTV Table, leading PBNP to hope that, at some point, when the Final DTV Table is cleared by Canada, the 200 kW operation of WQLN-DT will be permitted. However, PBNP has been told that, until this happens, the pending 200 kW application is apparently not in a position to be granted.

Curiously, despite the discrepancy between WQLN-DT's licensed and operating facilities at 39.1 kW and the allotment proposed in the DTV Table at 200

kW, Exhibit D to the *NPRM* lists WQLN-DT as a station “believed ready to commence post-transition operations” without further facility changes. That could only be true, of course, if the FCC grants the pending power increase for WQLN-DT.

If the proposed allotment is finalized for WQLN-DT at 200 kW, and PBNP’s pending power increase application is granted, PBNP would finally be able to move forward to order the DTV antenna specified by the application and allotment, and then would have to make arrangements for the necessary installation work to replace the existing antenna (used for both WQLN(TV) and WQLN-DT) and transmit with the higher power. The timing and process of that work is subject to significant uncertainties, supporting the need for transition flexibility on the part of the FCC.

On the other hand, if the WQLN-DT allotment were to permit it to use its existing antenna (ID No. 31388, rather than ID No. 67971 as proposed in the allotment at the moment), and a CP were to issue for 200 kW with that antenna, PBNP could finalize its digital operations on Channel *50 fairly easily, by making adjustments to existing transmission equipment but without having to undertake any tower work. In those circumstances, it could satisfy the FCC’s proposed deadline for constructing “final” DTV facilities by the deadline for the DTV transition.

However, in the meantime, concerns that might exist regarding Canadian clearance of WQLN-DT’s proposed facilities create uncertainty affecting how PBNP can plan for the transition. It cannot order an antenna and schedule tower work

until its allotment is finalized and cleared by Canada and its pending 200 kW application granted. PBNP really needs to know the status of the coordination of its permanent DTV channel allotment –whether it is resolved successfully or still in question, and, if so, an approximate date for which a definitive answer will be available.

COMMENTS

I. The FCC should be flexible in the process for and timing of construction of final DTV facilities.

PBNP strongly urges the FCC to exercise its discretion under the law establishing the February 17, 2009 digital transition deadline by providing substantial flexibility to stations regarding the process for and timing of their achieving their “ultimate” or “final” DTV transmission facilities, so long as facilities of some sort are constructed on permanent DTV channels by February 17, 2009. This would be particularly true if there turns out to be an issue with Canadian clearance of the supposedly “final” WQLN-DT allotment.

Clearly, the FCC has discretion to show such flexibility with respect to stations achieving their final replicating or maximized DTV facilities. The Digital Television and Public Safety Act of 2005, Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006), established February 17, 2009 as the deadline for the end of analog transmissions by all full power stations, and for the end of analog and digital transmissions on all out-of-core channels, but there is no requirement in the law, or even a suggestion, that the deadline needs to become a deadline as well for final DTV facilities.

PBNP urges that the FCC should take advantage of the flexibility in the law, by according flexibility to stations to achieve their final DTV facilities at the time and in the manner that they are best able to do so, subject to the minimal requirement that all DTV stations be operating on their permanent DTV channels by the transition deadline (unless construction extensions are authorized by particular circumstances). PBNP also urges the FCC to be clear as soon as possible on whether particular allotments in the zone of Canadian coordination have been approved.

II. The FCC should not require stations to construct facilities that precisely match the facilities specified in the Table of DTV Allotments.

In paragraph 67 of the *NPRM*, the FCC suggests that stations will need to get construction permits for, and then construct and license DTV facilities that precisely match the facilities specified in the DTV Table of Allotments, all to be accomplished by the transition deadline at the latest.

As noted above, PBNP does not believe that the FCC should require every station to be operating with its “full” permanent facilities by the transition deadline, if by “full” the FCC means precisely those facilities specified in the DTV Table. In addition, PBNP does not believe that, at this point, the FCC should not specify a requirement that stations apply for such facilities now, or a deadline for when they have to achieve them.

PBNP also urges the FCC to be flexible, as needed, for stations whose expectations about “full” DTV facilities may turn out to be unfulfilled because of

international coordination issues, or because the last-minute resolution of such issues require the ordering of new equipment and scheduling of tower work that might not, in fact, then be possible by the deadline. It would be exceptionally helpful in the case of WQLN-DT if the FCC would allow through a construction permit process for the adjustment or modification of facilities (such as directional antenna patterns) as compared to what is currently proposed in the DTV Table, or if the FCC would modify the Table otherwise to specify WQLN-DT's existing antenna rather than one that will need be specially ordered and installed at the last minute.

CONCLUSION

PBNP urges the FCC to adopt flexible rules consistent with the comments above.

Respectfully submitted,

**PUBLIC BROADCASTING OF
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